

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINKLEVOSS CAPITAL FUND, LLC,

Plaintiff,

v.

CHARLES SHREM,

Defendant.

Case No. 18-cv-8250 (JSR)

**MOTION TO CONFIRM
ATTACHMENT ORDER**

TABLE OF AUTHORITIES

Statutes

N.Y. C.P.L.R. § 6211(b)	1, 4
N.Y. C.P.L.R. §§ 6214, (a).....	1, 4

Winklevoss Capital Fund, LLC (“WCF”), by and through its undersigned counsel, submits this motion to confirm the levies obtained pursuant to the Court’s October 2, 2018 Order on Attachment and to request a ten-day extension on moving for such confirmation for the below-listed entities who have not timely filed a Garnishee’s Statement.

WCF further moves for confirmation of the levy on all personal property under Defendant Shrem’s possession or custody, which became effective on October 29 when Shrem was served with the Attachment Order. N.Y. C.P.L.R. § 6214(a).

This Motion for Confirmation is made pursuant to N.Y. C.P.L.R. § 6211(b) and the Court’s October 2 Order, both of which require a motion for confirmation within ten days of the first levy obtained pursuant to an ex parte order of attachment. A levy is effective upon service of such an order. N.Y. C.P.L.R. § 6214. WCF served all garnishees on October 22, 2018 and October 23, 2018. Thus, the instant motion is timely as it is being filed fewer than ten days after the first levy was effective.

In an effort not to duplicate papers, WCF refers the Court to its September 11, 2017 ex parte Application for Attachment, Dkt. Nos. 24-29, which outlines the reasons why the attachment is proper.

Pursuant to the Attachment Order, WCF served a copy of the Order on each garnishee through its registered agent for service of process in New York as well as through other means intended to give prompt notice to the garnishee. Proofs of Service are filed herewith. See Declaration of Tyler Meade (“Meade Decl.”), Ex. 1. WCF served the following garnishees:

Entity/Person	Date of Service
Bank of America Corporation	October 22
Bank Ozk	October 22
Branch Banking and Trust Company	October 22
bitFlyer USA, Inc.	October 22
Bitpay, Inc.	October 22
Bitstamp USA, Inc.	October 22

Bittrex LLC/Bittrex Inc.	October 22/October 23
Centennial Bank	October 22
Charles Schwab & Co., Inc.	October 22
Circle Internet Financial, Inc.	October 22
Coinbase, Inc.	October 22
Digital Asset Holdings, LLC	October 22
E*Trade Financial Corporation	October 22
Fidelity Investment, Inc.	October 22
Fifth Third Bank	October 22
itBit PTE., Ltd.	October 22
J.P. Morgan Chase Bank, N.A.	October 22
Local Bitcoins USA, Inc.	October 22
Noble Markets, LLC	October 22
Payward, Inc. (Kraken)	October 22
The PNC Financial Services Group, Inc.	October 22
Poloniex, LLC	October 22
TD Ameritrade, Inc.	October 22
Trustco Bank Corp., NY	October 22
Wells Fargo Advisors Financial Network, LLC	October 22
Wells Fargo Bank, National Association	October 22
Wells Fargo USA Holdings, Inc.	October 22
Xapo, Inc.	October 22

WCF also served Shrem with the Complaint the Summons and the Attachment Order on October 29. Meade Decl. Ex. 2.

The following entities have provided a Garnishee's Statement to WCF and the Court pursuant to the Attachment Order:

Entity	Assets Recorded	Date
Bittrex, Inc. ¹	.00051673 BTC .03916985 BTG .19110000 CRB	October 26
Branch Banking and Trust Company	None	October 26
Circle Internet Financial, LLC	.00006420 BTC	October 25
Digital Asset Holdings, LLC	None	October 26
itBit PTE. Ltd.	None	October 22
Local Bitcoins, USA, Inc.	None	October 24
Noble Markets, LLC	None	October 26
Poloniex, LLC	None	October 25
Wells Fargo Advisors Financial Network, LLC	None	October 23

¹ Based on an October 30 correspondence with Bittrex's counsel, the undersigned anticipates that Bittrex will be submitting an amended Garnishee's Statement owing to a typo in the original which may alter the total assets under levy.

Xapo, Inc.	.00005414 BTC	October 26
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The following entities have provided WCF written with notice that they do not hold any assets of Defendant Shrem, though WCF has not received a sworn Garnishee's Statement and is unaware of whether any have been filed with the Court (see Meade Decl., Ex. 3):

Entity	Date
Bank of America Corporation	October 22
Bank Ozk	October 22
bitFlyer USA, Inc.	October 24
Bitstamp USA, Inc.	October 25
Centennial Bank	October 22
Charles Schwab & Co., Inc.	October 22
Fidelity Investments	October 23
J.P. Morgan Chase Bank, N.A	October 29

WCF has not received an official written response to service of the Attachment Order from the following entities within five calendar days of service:

Entity
Bitpay, Inc.
Coinbase, Inc. ²
E*Trade Financial Corporation ³
Fifth Third Bank
Payward, Inc.
The PNC Financial Services Group, Inc. ⁴
TD Ameritrade, Inc.
Trustco Bank Corp.
Wells Fargo Bank, National Association
Wells Fargo USA Holdings, Inc.

² A Coinbase representative has informed the undersigned that it does not hold Shrem's assets, but so far has not provided an official written response. Meade Decl. ¶ 5.

³ An E*Trade representative has informed the undersigned that it does not hold Shrem's assets, but so far has not provided an official written response. Meade Decl. ¶ 5.

⁴ A PNC representative has informed the undersigned that it does not hold Shrem's assets, but so far has not provided an official written response. Meade Decl. ¶ 5.

WCF hereby moves for confirmation of the levy on the assets held at Circle Internet Financial, LLC, Bittrex, Inc., and Xapo, Inc identified above as well as any of the other Garnishees who may come into possession or custody of Shrem's assets.

WCF further moves for confirmation of the levy on Defendant Shrem of any and all personal property within Defendant Shrem's possession or custody up to and including 5000 bitcoin, less the amount levied with the Garnishees. *See* N.Y. C.P.L.R. § 6214.

Pursuant to N.Y. C.P.L.R. § 6211(b), WCF further moves for an additional ten days to move for confirmation of the Attachment Order against those entities who have not timely provided the Court with a Garnishee's Statement.

DATED: November 1, 2018

Respectfully submitted,

By: /s/ Tyler Meade

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